



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
March 24, 2015 at 2:00 p.m.

by
Jan Gouveia
Vice President for Administration
University of Hawai'i System

SB 387 SD2 HD1 – RELATING TO AFFIRMATIVE CONSENT

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

Thank you for the opportunity to submit testimony on SB 387 SD2 HD1, which establishes a task force to review and make recommendations on the University of Hawaii's executive policy on domestic violence, dating violence, sexual assault, and stalking.

The University of Hawai'i supports the intent of this measure and believes that a task force would be a fair and useful mechanism to garner insight and a better understanding of the issues from task force members as well as a good tool for the review of the current policy. We believe, however, that this measure is duplicative of HCR 100, which requests such a task force. The University would prefer HCR 100 because it would provide greater flexibility to the task force in conducting business.

It should be noted that the University updated its sexual harassment/sexual violence policy to be both fair and balanced in its form and application, with regards to all stakeholders that have an interest in an affirmative consent policy. These guidelines are specifically intended to address the requirements of the Violence Against Women Act (VAWA). It was carefully crafted, involving months of research and systemwide committee work, to achieve a standard that supports the University's broad mission of promoting safe, healthy campus environments, while at the same time addressing the complex and interrelated requirements of state and federal sex discrimination and sexual violence laws and regulations that cover students, employees, and third parties.

Thank you for the opportunity to testify on SB 387 SD2 HD1.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH
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JUDY KERN

Executive Director
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March 23, 2015

To: Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Cathy Betts, Executive Director
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 387, SD2, HD1, Relating to Affirmative Consent

Thank you for hearing this bill and for this opportunity for the Commission to testify in strong support of SB 387, SD2, HD1 which would create a comprehensive and community wide task force to review and revise the affirmative consent standard and policy for purposes of dealing with sexual assault cases, systemwide.

1 in 5 women will be the victim of a completed rape while in college. This epidemic of sexual violence on college campuses violates students' right to be free from sexual harassment while attending school, and thus, falls under the purview of Title IX. Seeing this epidemic nationwide, 800 colleges and universities nationwide have already adopted affirmative consent policies, according to the National Center for Higher Education Risk Management. While California is the only state that has implemented a statewide law, currently 10 other states in the nation are considering affirmative consent legislation. Other universities that have implemented this policy report that an affirmative consent policy improves the campus climate. Further, victims feel more inclined to report knowing that their character, clothing, alcohol intake, or other irrelevant data about their personal life will not be called into question in order to determine whether consent was given.

Historically, victim service providers and representatives from the women's community have largely been unable to consult and provide guidance on policies regarding gender based violence on our college campuses in Hawaii. To that end, the Commission supports the creation of a task force on affirmative consent and other areas of gender based violence. The policies revised through this task force will assist and guide the University of Hawaii system, ensuring compliance with Title IX and the Violence Against Women Act (VAWA Reauth. 2013). The Commission appreciates the opportunity to be a task force member and thanks you for hearing this important measure.



UNIVERSITY
of HAWAII®
SYSTEM

Testimony presented to the House Committee on Judiciary
March 24, 2015 at 2:00pm
By
Farrah-Marie Gomes, Chair

SB 387, SD 2 , HD 1– RELATING TO AFFIRMATIVE CONSENT

Dear Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee,

Thank you for this opportunity to provide testimony on SB 387 SD 2 HD 1 that establishes an affirmative consent task force to review and make recommendations on the University of Hawaii's executive policy on domestic violence, dating violence, sexual assault, and stalking. My name is Farrah-Marie Gomes and I present this testimony as Chair of the University of Hawai'i President's Commission on the Status of Women (UH-CSW).

The UH-CSW supports the intent of this bill; however, we believe this bill duplicates HCR 100 that requests the University of Hawaii to convene a task force to review its current policy on Affirmative Consent. The current policy referenced in HCR 100 is Executive Policy 1.204 Policy and Procedural Guidelines on Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking, which was signed by President Lassner on February 7, 2015. This policy replaces the previous policy on sexual assault and reaffirms the University's commitment to ensuring a safe environment across all ten campuses and having zero tolerance for gender violence and harassment. This policy specifically addresses the issue of consent and provides a strong, clear definition of "Affirmative Consent" that the UH-CSW strongly endorses.

The UH-CSW would like to recognize the hard work that went into updating Executive Policy 1.204 to incorporate both the spirit and the most current legal requirements of the Reauthorization of the Violence Against Women Act (VAWA) of 2013 and Title IX of the Education Amendments of 1972. This policy is a result of many months of collaboration and consultation across the UH system -- including consultation with undergraduate and graduate student organizations, faculty senates, student affairs, campus administrators, UH-CSW, LGBTI commission, Title IX and EEO coordinators, all faculty and staff unions, and other stakeholders. The successful implementation of this policy will require the continued work of many, which is the reason why a task force is a good idea.

Formed in 1972 at the UH Manoa campus, the UH-CSW expanded in 1986 to include faculty, staff and students appointed by the President of the University of Hawaii, with representatives from our system offices and 10 campuses across the State. The UH-CSW is committed to supporting the well-being, development, and advancement of all University women. The Commission actively promotes a working and learning environment free of sexism and discrimination through policy, advocacy and education.

This mission is achieved through serving as a conduit for information between the administration and the total University community by making recommendations to the UH President on issues that have particular relevance for women, including, but not limited to safety and security, equity, access, retention, and advancement; fostering an awareness, understanding and recognition of the potential, contributions, special challenges and many roles women play in a University community; and developing alliances with like organizations throughout the community, state, and nation.

In line with our mission, the UH-CSW pledges to fully support the University of Hawaii with implementation and review of Executive Policy 1.204 Policy and Procedural Guidelines on Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking. We are pleased to have a member of our commission included in the composition of the proposed task force.

For these reasons, the UH-CSW supports the intent of SB 387 SD 2 HD 1; however we respectfully request that such a task force be established through HCR 100 instead.

Thank you for this opportunity to submit testimony.



March 24, 2015

To: Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Co-Chair

RE: SB 387 SD2 HD1 Relating to Affirmative Consent
Hearing: Tuesday, March 24, 2015, 2:00 p.m., Room 325

POSITION: Support

The Hawai'i State Democratic Women's Caucus (HSDWC) writes in support of SB 387 SD2 HD1 Relating to Affirmative Consent which organizes a taskforce to advise the University of Hawaii on an affirmative consent standard for all policies and protocols relating to sexual assault, domestic violence, dating violence, and stalking. However, the Caucus prefers legislation which would mandate that the UH system establish and enforce such policies.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls it is because of this mission that that the caucus supports this measure as a beginning to the establishment of a comprehensive policy that would protect students.

HSDWC is concerned about the lack of effort, lack of urgency, and overall foot dragging by the University of Hawaii system to comply with Title IX and VAWA requirements; and by the UH administration's excuse that they lack resources to follow these laws. UH is responsible for maintaining a safe environment free from violence for all students. This requirement is not new and must be implemented, there is no room for excuses.

The Caucus has been concerned about violence against women on the UH campuses for almost a decade and has advocated for the improvement of campus policies and procedures. We have found the UH administration to be unresponsive to our concerns. This is why we strongly support a legislative mandate to hold the UH administration accountable for implementing needed policies and procedures and to ensure that real progress is made. We believe that despite the recent revelation of a brand new policy, and because of the lack of progress over the last decade, that legislation is necessary to keep the UH system moving forward with the development and implementation of effective policies.

We ask that the committee pass this measure and we thank the committee for the opportunity to provide testimony.

HAWAII YOUTH SERVICES NETWORK

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Daryl Selman, President
Judith F. Clark, Executive Director
Aloha House
American Civil Liberties Union of Hawaii
Bay Clinic, Inc.
Big Brothers Big Sisters of Honolulu
Big Island Substance Abuse Council
Blueprint for Change
Bobby Benson Center
Catholic Charities Hawaii
Child and Family Service
Coalition for a Drug Free Hawaii
Courage House Hawaii
Domestic Violence Action Center
EPIC, Inc.
Family Programs Hawaii
Family Support Hawaii
Hale Kipa, Inc.
Hale 'Opio Kauai, Inc.
Hawaii Behavioral Health
Hawaii Student Television
Healthy Mothers Healthy Babies Coalition
Hina Mauka Teen Care
Hui Malama Learning Center
Kaanalike
Kahi Mohala Behavioral Health
KEY (Kualoa-Heeia Ecumenical Youth)
Project
Kids Hurt Too
Kokua Kalihi Valley
Life Foundation
Marimed Foundation
Maui Youth and Family Services
Palama Settlement
P.A.R.E.N.T.S., Inc.
Parents and Children Together (PACT)
Planned Parenthood of Hawaii
REAL
Salvation Army Family Intervention Svcs.
Salvation Army Family Treatment Svcs.
Sex Abuse Treatment Center
Susannah Wesley Community Center
The Catalyst Group
The Children's Alliance of Hawaii
Waikiki Health Center
Women Helping Women
YWCA of Kauai

March 23, 2015

To: Representative Karl Rhoads, Chair
And members of the Committee on Judiciary

TESTIMONY IN SUPPORT OF SB 387 SD2 HD1 RELATING TO AFFIRMATIVE CONSENT

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports SB 387 SD2 HD1 Relating to Affirmative Consent.

Education has long been recognized as the great equalizer in America. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime. Studies show that about one in five women is a survivor of attempted or completed sexual violence while in college. In the great majority of cases (75-80%), she knows her attacker, whether as an acquaintance, classmate, friend or (ex)boyfriend. Many are survivors of what's called "incapacitated assault" in that they are sexually abused while drugged, drunk, passed out, or otherwise incapacitated. In addition, a substantial number of men experience sexual violence during college. Although schools have made progress in addressing rape and sexual assault, more needs to be done to ensure safe, secure environments for students of higher education.

U.S. Department of Education Office for Civil Rights and the U.S. Department of Justice provide general guidance for colleges and universities on how to protect and provide services and support for sexual assault victims; however, there is currently a lack of uniform standards. The inconsistent and in too many cases inadequate application of federal law was highlighted by President Barack Obama's formation of a White House Task Force to Protect Students from Sexual Assault.

The Affirmative Consent Standard strengthens protections for victims of sexual assault on Hawaii college campuses by requiring campuses to adopt an affirmative consent standard for the evaluation of complaints, implement comprehensive prevention programs and victim-centered sexual assault response policies and protocols, and form partnerships with on campus and community-based organizations to assist victims with connecting to services.

Affirmative Consent eliminates ambiguity and serves to educate students about appropriate sexual interactions. This will begin to change the culture of acceptance of sexual activity under certain circumstances, such as when students are intoxicated, and create an environment in which clear affirmative consent is the standard.

Campus sexual assault is a complicated, multidimensional problem with no easy or quick solutions. By passing Affirmative Consent we demonstrate Hawaii's commitment to youth and providing an education free from discrimination.

Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, reading "Judith F. Clark". The signature is written in a cursive, flowing style with a large initial "J" and a prominent "F".

Judith F. Clark
Executive Director

To: Hawaii State House of Representatives Committee on Judiciary
Hearing Date/Time: Tuesday, March 24, 2015, 2:00 p.m.
Place: Hawaii State Capitol, Rm. 325
Re: Testimony of Planned Parenthood of Hawaii in support of S.B. 387, SD2, HD1

Dear Chair Rhoads and Members of the Committee on Judiciary,

Planned Parenthood of Hawaii (“PPHI”) writes in support of S.B. 387, SD2, HD1, which seeks to establish a task force to review and make recommendations on the University of Hawaii's executive policy on domestic violence, dating violence, sexual assault, and stalking.

Planned Parenthood of Hawaii is dedicated to providing Hawaii's people with high quality, affordable and confidential sexual and reproductive health care, education, and advocacy. We are proud to stand in support of this legislation and to offer our support as a leading sexual and reproductive health care provider. The intersections of gender-based violence and reproductive health are clear. At PPHI, we work to meet the needs of survivors—and to prevent sexual assault from ever happening—in all areas of our work, from screening for intimate partner violence, to advocating for policies that support comprehensive sexual education, including teaching about healthy relationships and consent.

The need for action on college sexual assault in Hawaii is urgent. An estimated one in four women and three percent of men in the United States experience an attempted or completed rape while in college. Moreover, the University of Hawaii system is under federal investigation for Title IX violations and sexual violence case mishandling. This is unacceptable. S.B. 387 will help strengthen campus resources and supportive services for college students as well as ensure that students and faculty learn about affirmative consent, bystander intervention, and how to handle sexual assault cases.

However, education about healthy relationships and consent needs to start much earlier than college. In addition to S.B. 387, we need comprehensive sexual education in every school, starting in kindergarten, to make sure students learn about healthy relationships many years before they even think about going to college or entering into intimate relationships. Gaps that remain in Hawaii's sexual health education have a significant impact on young people's well-being and future relationships.

We urge the legislature to pass S.B. 387 and call on the legislature to ensure that comprehensive, age-appropriate sexual health education is provided to every student, every year, from kindergarten through 12th grade. Thank you for this opportunity to testify in support of S.B. 387.

Sincerely,
Laurie Field
Director of Public Affairs & Government Relations

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To: House Committee on Finance
Senator Sylvia Luke, Chair
Senator Scott Y. Nishimoto, Vice Chair

To: House Committee on Labor & Public Employment
Senator Mark M. Nakashima, Chair
Senator Jarrett Keohokalole, Vice Chair

To: House Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Joy A. San Buenaventura, Vice Chair

From: Sarah Chaney Campbell sccamp92@hawaii.edu UH Manoa Student

RE: Supporting SB387
Relating to Affirmative Consent
Tuesday, March 25, 2015 2:00PM Conference Room 325

I am Sarah Campbell, a Master of Social Work student at University of Hawaii at Manoa testifying in favor of SB387 relating to affirmative consent. As someone who has worked with survivors of domestic violence and rape in the past, I understand the need for campus reform relating to the prevention of sexual violence on campus and how it is addressed with both the victim and the perpetrator.

Affirmative consent policies on college campus are a positive step toward preventing and addressing campus rape. Rather than putting the burden of proof on the victim, it puts the burden of proof on the perpetrator. Victims of sexual assault on college campuses are often subject to a series of invasive and humiliating interviews in which they are blamed and often re-victimized. By changing the “no means no” to “only yes means yes” protocol, the instances of victim blaming can be reduced. It also gives women the opportunity to change their mind about sex during the act itself. I’ve worked with many women who had difficulty proving that they were victimized if their rapist was a person who they initially consented to sex with, but changed their

mind in the middle and were forced to continue or participate in sex acts that they did not agree to.

Affirmative consent is not only preventive but it can also improve campus disciplinary proceedings by making it clearer what behavior is acceptable and what behavior is not. In addition, affirmative consent policies can also ensure that those involved in disciplinary proceedings no longer ask survivors questions like: “Did you fight back?” or “Have you had a relationship with the accused?” or “What were you wearing?” Passing SB387 would put University of Hawaii one step closer to ethically addressing campus rape.

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

LATE

Executive Director
Adriana Ramelli

DATE: March 24, 2015

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TO: The Honorable Karl Rhoads, Chair
The Honorable Joy San Buenaventura, Vice Chair
House Committee on Judiciary

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: Testimony in Support of S.B. 387, S.D. 2, H.D. 1
Relating to Affirmative Consent

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center, a program of Kapi'olani Medical Center for Women & Children, in support of Senate Bill 387, Senate Draft 2, House Draft 1 (S.B. 387, S.D. 2, H.D. 1). We further respectfully request your consideration of our additional comments concerning this measure.

S.B. 387, S.D. 2, H.D. 1 would establish a task force including representatives from the University of Hawai'i system (UH), state government agencies, and community organizations to review and make recommendations for UH's executive policy on sexual assault, in order to strengthen protections for students on all UH campuses.

Sexual assault remains epidemic on college campuses: 1 in 5 women and 1 in 16 men are sexually assaulted during college. Moreover, 90% of these assaults go unreported and, of reported assaults, only 30% of perpetrators who are found guilty are expelled. This has triggered sweeping federal countermeasures, including strict annual reporting requirements. Notably, UH was recently placed under investigation by the U.S. Department of Education for possible violations of federal law over the handling of sexual violence complaints.

Despite nationwide focus on this issue, schools continue to struggle to implement policies and programs to prevent sexual assault and adequately support survivors. This is unacceptable, as schools have a duty to provide safety and security, allowing students to pursue their educational goals free from the devastating physical, emotional, and social effects of sexual assault.

The SATC notes that UH recently published a revised written policy concerning sexual assault which includes a definition of affirmative consent. While this is an important and commendable first step, we respectfully point out that the revised policy does not create and implement, or provide an adequate framework for, a comprehensive, integrated prevention and response system for sexual assault on UH campuses.

It is our strong belief that such a prevention and response system is needed to effectively combat on-campus sexual assault. In particular, we would recommend that students and faculty receive education and training regarding UH's policies to address sexual assault, and all related procedures and resources, both as new members of the UH community and on an ongoing basis; that UH staff who interact with survivors of sexual assault receive training in non-judgmental, victim-centered communication skills; that processes for receiving, investigating, and adjudicating complaints, to the greatest extent reasonable, be transparent, easy-to-understand, fair, and consistent across all UH campuses; that survivors be able to receive immediate and ongoing care, treatment and support, from both on-campus and community providers; and that complainant survivors and survivor-witnesses be informed of their right to report offenses to law enforcement, and that UH be prepared and willing to coordinate and cooperate with law enforcement with respect to such reports.

By bringing together a taskforce comprised of representatives from UH and stakeholder government agencies and community organizations, S.B. 387, S.D. 2, H.D. 1 will allow the State of Hawai'i to efficiently develop a comprehensive prevention and response system for all UH campuses, with corresponding changes to UH's policy.

In order to allow the taskforce to successfully accomplish this task, the SATC respectfully requests the enclosed amendments to S.B. 387, S.D. 2, H.D. 1, which are summarized as follows:

- That the Executive Director of the SATC be permitted to designate a representative to participate in the taskforce if needed.
- In order to assure that the taskforce has appropriate and necessary subject matter authority, it should also be permitted to specifically consider (a) training for UH staff who receive and handle complaints regarding victim-centered communications, and (b) procedures for UH's coordination and cooperation with police and prosecutors.

By empowering UH and other Hawai'i stakeholders to work together towards the implementation of an effective prevention and response system to combat sexual assault on UH campuses, your support of S.B. 387, S.D. 2, H.D. 1 safeguards Hawai'i's college students and sends a powerful message that our State shall ensure them a secure and respectful learning environment.

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

S.B. NO. 387
S.D. 2
H.D. 1

A BILL FOR AN ACT

RELATING TO AFFIRMATIVE CONSENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities that receive any federal funds. In 2002, Congress renamed Title IX the Patsy Takemoto Mink Equal Opportunity in Education Act in recognition of the late United States Representative Patsy Mink's tireless efforts to develop and pass Title IX.

The Violence Against Women Act is aimed at ending violence against women and girls and remedying laws and social practices that, in the past, have fostered and justified violence against women and girls. There has been increasing media attention surrounding allegations of sexual misconduct on college campuses focusing on universities' perceived "deliberate indifference" and lack of institutional response to a growing number of incidents and allegations of sexual violence and sexual harassment.

The University of Hawaii is committed to maintaining and promoting safe, respectful campus environments that are free

from discrimination, harassment, and sexual violence. The University of Hawaii prohibits and does not tolerate sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The University of Hawaii board of regents currently has an executive policy in place concerning incidents of sexual assault, domestic violence, dating violence, and stalking that are subject to the data collection requirements of the federal Higher Education Act of 1965, 20 United States Code section 1092(f), and involve a student, faculty member, or staff member, whether on or off campus. The University of Hawaii board of regents understands and appreciates the need for a review of all of its policies, including the executive policy on sexual assault and sexual harassment.

The purpose of this Act is to provide for a review of this policy.

SECTION 2. (a) There is established the affirmative consent task force to review and make recommendations on the University of Hawaii's executive policy on domestic violence, dating violence, sexual assault, and stalking.

(b) The task force shall comprise:

(1) The president of the University of Hawaii, or the president's designee;

- (2) The vice president for community colleges, or the vice president's designee;
- (3) The chancellor of the University of Hawaii at Manoa, or the chancellor's designee;
- (4) The chancellor of the University of Hawaii at Hilo, or the chancellor's designee;
- (5) The chancellor of the University of Hawaii at West Oahu, or the chancellor's designee;
- (6) The executive director of the Hawaii state commission on the status of women, or the executive director's designee;
- (7) The chair of the University of Hawaii commission on the status of women, or the chair's designee;
- (8) A student at the University of Hawaii;
- (9) The executive director of the Sex Abuse Treatment Center, or the executive director's designee;
- (10) A member of the American Civil Liberties Union;
- (11) A member of the National Association of Social Workers;
- (12) A representative of the Hawaii State Coalition Against Domestic Violence;
- (13) A representative of the Honolulu police department; and
- (14) A member of the women's legislative caucus of the legislature.

(c) The members of the task force shall elect a chairperson from among themselves.

(d) No member of the task force shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the task force.

(e) The task force shall consider the following concepts when reviewing and revising the University of Hawaii's current policy:

- (1) Affirming the University of Hawaii's commitment to
increasing resources and strengthening the
institutional infrastructure of all of its campuses to
more effectively address the issue of affirmative
consent;
- (2) Considering best practices and current professional
standards in reviewing and revising the current
policy; and
- (3) Using contemporary corrective actions consistent with
academic environments, standard business practices,
and the laws of the State.

(f) The task force shall take into consideration that the University of Hawaii's policy shall provide guidance for the following at each campus within the University of Hawaii system:

- (1) Comprehensive education and prevention programs that inform the University of Hawaii community about the policies, resources, complaint options, remedies, and the risks and myths that contribute to sexual harassment, sexual assault, domestic violence, dating violence, and stalking;
- (2) Information and assistance for individuals who report alleged sexual harassment and sexual violence, including informing individuals about their right to file criminal charges as well as the availability of on- and off-campus resources (e.g., medical, counseling, advocacy, legal, and other support services, including confidential options) and alternative remedies, such as housing, academic, or workplace accommodations, if appropriate and reasonably available, regardless of whether the individual chooses to file a complaint with or report a crime to campus security or a local law enforcement agency;
- (3) Prompt and equitable complaint procedures for students and employees that are accessible and widely publicized on a regular basis;

- (4) Information for both respondents and complainants regarding their rights during a student disciplinary hearing or investigation, including the right to a fair and impartial process; to be accompanied by an advisor; to ~~give their side of the story and~~ present all relevant evidence; to receive simultaneous updates on the status of the investigation and written notice of the outcome, including relevant sanctions imposed on student respondents; and to appeal; ~~and~~
- (5) Provisions for corrective actions that the campuses will implement or instill, including remedies and disciplinary sanctions, to end incidents of harassment or sexual violence and to prevent their recurrence-;
- (6) Training for UH staff who receive and handle complaints of Sexual Assault, Domestic Violence, Dating Violence and Stalking incidents, regarding victim-centered approaches to interviewing the complainant survivors and survivor witnesses; and
- (7) Procedures for coordinating and cooperating with police and prosecuting attorneys in the event that a survivor chooses to report an incident of sexual assault, domestic violence, dating violence or stalking to law enforcement.

(g) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2016.

(h) The task force shall cease to exist on June 30, 2017.

SECTION 2. This Act shall take effect upon its approval.

Report Title:

Affirmative Consent; University of Hawaii; Task Force

Description:

Establishes a task force to review and make recommendations on the University of Hawaii's executive policy on domestic violence, dating violence, sexual assault, and stalking. (SB387 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments: The Coalition has testified in this bill's previous committee hearings in support of a mandated affirmative consent policy in UH system. While we feel that the University needs strong legislative oversight to remain sufficiently motivated to change the culture of violence against women so prevalent in the college system, we are hopeful that this task force will provide meaningful solutions. Mahalo for reading, Ann S. Freed Co-Chair, Hawaii Women's Coalition

LATE



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

**TESTIMONY FOR SENATE BILL 387, SENATE DRAFT 2, HOUSE DRAFT 1,
RELATING TO AFFIRMATIVE CONSENT**

**House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Joy A. San Buenaventura, Vice Chair**

**Tuesday, March 24, 2015, 2:00 PM
State Capitol, Conference Room 325**

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 300 local members. On behalf of our members, we offer this testimony in support of, with proposed amendments for SB 387, SD2, HD1, relating to affirmative consent.

In its 2010 Sexual/Relationship Violence Survey, the University of Hawai'i found that 54 female UH-Manoa students noted being raped or sexually assaulted out of a sample size of 565 respondents, an approximately 10 percent per-population average, which comports with national averages. Out of 2,700 respondents, though, only 9 percent of students who noted sexual assault during their time at UH actually reported it, while just 7 percent who said they were raped reported the incidents. Moreover, in 2014, UH-Manoa was named one of 55 colleges under federal scrutiny for its handling of sexual assault and gender-based violence. Roughly 1 in 4 female students around the country are likely to be sexually assaulted as undergraduates, according to national figures, with the Department of Justice finding that 80 percent of campus rapes went unreported between 1995 and 2013.

Enacting a “yes means yes” policy for UH campuses—all of which were declared as “rape free zones” in 2005—will encourage university administrators to take a vigorous stand against sexual assault. While critics argue that “yes means yes” policies are difficult to enforce, the safety of our students demands action. An affirmative consent policy will not “turn people into unwitting rapists,” as *Reason Magazine* argued, but would instead establish clear boundaries for what does not qualify as consent for a sexual encounter, including intoxication, pharmaceutical impairment, and sleep. Strange as it may seem to elucidate such limits in law, college students, today, are routinely faced with situations in which expressions of voluntary agreement to sexual conduct are unsolicited or disregarded. In a “no means no” juridical setting, the burden of proof

falls on the sex assault victim to prove that s/he has been assaulted, with cases often devolving into “he said, she said” debates. While an affirmative consent policy will not resolve all ambiguities in determining whether or not verbal or nonverbal communication of consent was obtained, it will create a victim-centered approach to sexual assault cases, whereby the victim's medical and psychological needs are the first priority of administrators. Perhaps most importantly, such a policy would mandate the provision of information regarding sexual assault counseling to potential victims, exactly the kind of services needed to make victims feel safe and incentivize reporting. Of equal significance is an emphasis that consent may be revoked at any time, meaning that consent must be maintained throughout a sexual act. Thus, a victim for whom a “kiss was just a kiss” will be protected from having the initial physical gesture used as evidence that “s/he wanted it,” a particularly insidious and common way of shaming victims into silence.

Passionate trysts will not be criminalized under this law. If both or all partners to sexual conduct are enthusiastic about the encounter, they will have no reason to file a complaint. Some naysayers contend that one partner could feel ambivalent about the act after the fact and reinterpret the act as assault, but this is, yet again, little more than a hyperbolic attempt to blame victims for their assaults. According to the Department of Justice and City University of New York School of Law dean Michelle Anderson, false rape accusations occur at a rate of merely 2 percent, a similar rate of false accusations for other violent crimes. Therefore, it is unlikely that passage of an affirmative consent policy or any other anti-rape measure will lead to increased persecutions of innocent students. Accordingly, we believe that this measure should be amended to place an affirmative consent policy in law by reinserting the SD1 language back into this bill.

Could a student infer consent from a prospective sexual partner pulling them down on a dorm room bed and motioning to remove their clothes? Perhaps. In light of the high rate of sexual assaults on our campuses, however, isn't it more important to protect against sexual violence? More simply, does it hurt our students to ask? We would strongly answer, “no.” We hope that you do the same.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

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March 24, 2015

To: Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Members of the Committee on Judiciary

From: Noriko Namiki
YWCA of O'ahu

Re: Support for SB387 SD2 HD1 – Relating to Affirmative Consent

Aloha Chair Rhoads, Vice Chair San Buenaventura and members of the committee:

My name is Noriko Namiki, Chief Executive Officer of the YWCA of O'ahu, testifying in support of SB387 SD2 HD1, Relating to Affirmative Consent, which would mandate that the University of Hawaii implement an affirmative consent standard and policy for purposes of dealing with sexual assault cases, system-wide. Additionally, SB387 SD2 HD1 contains important components, including increased sexual assault prevention and education, increased crisis intervention services, and procedural protections for both victims and the accused.

Although California is the only state that has implemented a statewide law, Hawaii and ten other states in are considering affirmative consent legislation. Of the more than 800 universities and colleges that have implemented this policy, the majority report that an affirmative consent policy improves the campus climate. Mandating an affirmative consent policy across all UH campuses would provide better understanding of the university's policies and would even out the disparate process in which different campuses approach sexual assault cases.

The University of Hawaii is still under a Title IX investigation by the United States Department of Education, Office of Civil Rights, along with more than 50 other universities nationwide. When the Commission began discussions with the UHM about the need for Title IX and VAWA compliance, a robust training process, more hiring of Title IX staff, education on sexual violence and dating violence during new student orientation, and the availability of campus crisis services for students who experience sexual violence, the discussion was slow and much was promised in terms of compliance and movement forward.

Despite the passage of Title IX of the Education Amendments of 1972, which protects individuals from discrimination based on sex in education programs or activities that receive Federal financial assistance, and the 2013 reauthorization of the Violence Against Women Act ("VAWA"), which expands protections for victims of domestic abuse and sexual assault, it is still shocking to see that even today one in five women will be the victim of rape or attempted rape. For women who attend college, the statistics are grimmer with one in four college women reporting rape or attempted rape since their 14th birthday.

In 2012, UH Manoa reported 11 forcible sex offenses in 2012 according to a campus report issued in compliance with the Clery Act, which provides guidelines for campus safety and security reporting. System-wide, the number was 11 in 2012. In 2011, UH Manoa reported 12 assaults with 16 reported system-wide.

The Clery Act requires annual reporting of statistics for various criminal offenses including sexual assault, however, Kauai and Leeward campus did not issue reports for the last two years.

Although Title IX and the changes to VAWA, specifically to Section 304 – that Campus Sexual Violence Act Provision – which imposes new rules that demand institutional overhaul and a renewed commitment to compliance at universities like UH which receive federal funding, UH students continue to face sexual violence on campus. We are gravely concerned that not only are sexual crimes under-reported system-wide, they are going unreported and perpetrators are getting away unpunished.

Since its founding in 1900, the YWCA of O‘ahu exists to cultivate opportunities for women’s and girls’ growth and leadership, to help them create fulfilling lives for themselves and their families, and facilitating social change with positive economic impact for their communities.

On behalf of the YWCA of O‘ahu, I humbly urge members of this committee to pass this legislation.

With Aloha,

A handwritten signature in black ink, appearing to read "Noriko Namiki". The signature is fluid and cursive, with a period at the end.

Noriko Namiki
Chief Executive Officer
YWCA of O‘ahu

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Mallow	Individual	Support	No

Comments: As a student at the University of Hawaii I stand in strong support of this bill. A clear definition of what it means to consent and what is not consent is needed on campus and in the community. A clear policy would minimize a gray area and work to protect all parties involved in sexual encounters and activities. An effective policy would also eliminate the chance for the "they did not say no" argument and give rise to the empowerment of "did they say yes?". For these reasons and so many more that other members of the community have outlined in their testimonies, I urge you to vote affirmatively on this measure. Thank you for the opportunity to testify in support of this bill.